



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*One Pierrepont Plaza
Brooklyn, New York 11201*

*Mailing Address: 147 Pierrepont Street
Brooklyn, New York 11201*

August 2, 2007

Honorable Roanne L. Mann
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. City of New York
CV-07-2067 (Garaufis, J.) (Mann, M.J.)

Dear Magistrate Judge Mann:

In accordance with Your Honor's instructions at the conference held on July 24, 2007, Plaintiff United States of America respectfully encloses, for Your Honor's consideration and signature, a proposed Agreed Protective Order, which concerns certain documents and information to be produced in this action, and which has been signed by counsel for the United States and defendant City of New York.

Respectfully submitted,

WAN J. KIM
Assistant Attorney General

By: /s

SHARON A. SEELEY (SS5608)
Senior Trial Attorney
(202) 514-4761
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section-PHB 4500

2

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York

By: /s

ELLIOT M. SCHACHNER
(718) 254-6053
KENNETH STAHL
(718) 254-6519
Assistant United States Attorneys

cc:

All counsel of record
(Via ECF)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CITY OF NEW YORK,

DEFENDANT.

CIV. ACTION No. 07-cv-2067
(GARAUFIS, J.)(MANN, M.J.)

AGREED PROTECTIVE ORDER

Plaintiff United States of America ("United States") and defendant City of New York ("City"), through their respective counsel, have consulted and agreed to entry of this Protective Order. Therefore, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

It is hereby ORDERED that:

1. Confidential Material

A. The United States and the City and any experts, consultants and support service personnel retained by plaintiff or defendant are required to maintain the confidentiality of the following information obtained through discovery in this litigation or obtained and marked as exhibits in depositions in this case:

i) names, addresses, telephone numbers and social security numbers of current and former employee(s) of the City's Fire Department ("FDNY"), and applicants for the entry-level firefighter position in the FDNY; and

ii) other information which specifically identifies such current or former employee(s), including but not limited to information in personnel files;

iii) written examination items (i.e., examination questions) from the written examination used as part of Examination No. 7029 or Examination No. 2043. Notwithstanding any other provision(s) of this Protective Order, written examination items shall no longer be confidential material protected from disclosure by this Protective Order after the date on which the City administers the written examination portion of Examination No. 2043 for the last time.

B. Documents and information are not Confidential Materials to the extent that they:

- i) are properly obtained by counsel for the United States in this action or their support staff from a source other than the City; or
- ii) are otherwise publicly available.

2. Limitations on Disclosure

The information described in paragraph 1, supra, shall be used solely for the purpose of this litigation.

A. For the purpose of this litigation, the information described in paragraph 1, supra, may be disclosed to the following persons only:

- i) the parties' attorneys and their support staff;
- ii) experts and consultants and their administrative and secretarial employees employed by a party or its attorneys in this lawsuit and providers of copy services and litigation preparation support services employed by a party or its attorneys in this lawsuit, all of whom must agree to abide by the terms of this Protective Order;
- iii) any state entity with authority or responsibility for the certification or licensure of firefighters or for testing for such certification or licensure; and
- iv) the Court, its personnel and court reporters.

B. Before making disclosure of information described in paragraph 1, supra, to persons listed in paragraph 2(A)(ii), such persons shall be advised of the terms of this Protective Order and be given a copy of it; and such persons shall execute a nondisclosure agreement in the form of Attachment A. The signed nondisclosure agreement shall be retained by counsel for the party making the disclosure.

C. Disputes regarding the authorization of access to information described in paragraph 1, supra, shall be resolved by the Court.

3. Use of Confidential Material

A. The following shall not use Confidential Material for any purpose other than for the preparation or presentation of the United States' case in this action: the United States, attorneys for the United States and any expert(s) or consultant(s) retained by the United States or its attorneys.

B. Portions of deposition transcripts (including deposition exhibits) that reveal Confidential Material shall be deemed confidential and shall be separately bound, with a cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed Confidential Materials within the meaning of this Protective Order.

C. If any paper which reveals Confidential Material is filed with the Court, the portion(s) of the paper which reveal the Confidential Material shall be redacted from the paper, and the redacted copy of the paper shall be filed with the Court in the usual manner. An unredacted copy of the paper shall be delivered to the Court enclosed in a sealed envelope bearing the caption of this action, an indication of the nature of the contents and the following legend:

CONFIDENTIAL

This envelope contains documents or information designated confidential pursuant to an order entered by the United States District Court for the Eastern District of New York in the above-captioned action. This envelope shall not be opened or unsealed without the express direction of a judge of this Court, and its contents shall not be displayed or revealed except as the Court may order. This envelope and its contents shall at all times be maintained separate and apart from the publicly available files of this case.

D. Nothing in this Protective Order is meant to, nor shall, inhibit, in any way, the use of the information described in paragraph 1, supra, by the City in the ordinary course of the City's operations.

E. Nothing in this Protective Order is meant to, nor shall, inhibit, in any way, the use of the information described in paragraph 1, supra, by any party at trial or in preparation for trial.

F. Nothing in this Protective Order is meant to, nor shall, prevent or in any way limit or impair the right of the United States to provide Confidential Materials to a Congressional entity; provided, however, that the United States shall notify the Congressional entity requesting the materials that the Confidential Materials have been produced pursuant to this Protective Order and shall, if there are no objections interposed by the Congressional entity requesting the documents, use reasonable efforts to notify the City of the Congressional entity's request and the United States' response thereto.

G. If Confidential Material is disclosed to any persons other than in the manner authorized by this Protective Order inadvertently or otherwise, the party responsible for the disclosure must, immediately upon learning of the disclosure, inform counsel for the City of all

pertinent non-privileged facts relating to such disclosure in writing and shall make every effort to prevent disclosure by each unauthorized person who received such information.

4. Destruction of Confidential Material

Within ninety (90) days of the final conclusion of this litigation (including the exhaustion of all time for appeals or the expiration or dissolution by the Court of any consent decree, order or judgment), the United States shall destroy all documents containing Confidential Material, as described in paragraph 1, supra, and all copies thereof in its possession, including documents containing such information in the possession of all other persons hired or retained by the United States to assist in the preparation of this matter for trial. Notwithstanding the foregoing, notes and other materials that are, or contain, the work product of attorneys may be retained. However, any such retained work product shall not be used by the United States' attorneys in any other case.

5. Duration

This Protective Order shall remain in effect throughout this litigation and until all Confidential Material and copies thereof and all extracts and summaries of such Confidential Material are destroyed in accordance with the terms set forth at Paragraph 3 herein.

SIGNED this ____ day of _____, 2007.


HONORABLE ROANNE L. MANN
United States Magistrate Judge

AGREED:

For plaintiff United States of America:

WAN J. KIM
Assistant Attorney General

By:




SHARON A. SEELEY (SS5608)
Senior Trial Attorney
(202) 514-4761

U.S. Department of Justice
Civil Rights Division
Employment Litigation Section-PHB 4500
950 Pennsylvania Ave., NW
Washington, D.C. 20530
Telephone: (202) 514-4761
Facsimile: (202) 514-1005

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York

By:

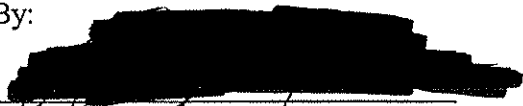


ELLIOT M. SCHACHNER
(718) 254-6053
KENNETH STAHL
(718) 254-6519
Assistant United States Attorneys
Eastern District of New York
147 Pierrepont Street
Brooklyn, New York 11201
Telephone: (718) 254-7000

For defendant City of New York:

MICHAEL A. CARDOZO
Corporation Counsel for the City of New York
100 Church Street, Room 2-100
New York, New York 10007
(212) 788-0872

By:



GEORGIA PESTANA (GP8596)
Assistant Corporation Counsel

Attachment A

NONDISCLOSURE AGREEMENT

The undersigned hereby acknowledges that (s)he has read the Protective Order entered by the United States District Court for the Eastern District of New York on _____, 2007 in the action entitled United States v. City of New York, No. 07-cv-2067 (E.D. N.Y.) Or has been advised of its provisions and contents. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than in connection with that case and agrees to be bound by the terms and conditions of said Order unless and until modified by further Order of the Court in that case.

DATED: _____

Signature

Printed Name